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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/855,905	05/14/1997	MASAAKI YAMANAKA	443-17	2320

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DILWORTH & BARRESE, LLP
333 EARLE OVINGTON BLVD.
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UNIONDALE, NY 11553

EXAMINER

KRUER, KEVIN R

ART UNIT	PAPER NUMBER
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1794

MAIL DATE	DELIVERY MODE
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12/11/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MASA AKI YAMANAKA,
HIROSHI KOYAMA and YASUHIRO UEDA

Application No. 08/855,905
Technology Center 1700

Mailed: December 11, 2008

Before PAMELA S. BENNETT, *Review Team Paralegal*
BENNETT, *Review Team Paralegal*.

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on August 14, 2008. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matter requiring attention prior to docketing.

EXAMINER'S CONSIDERATION OF REPLY BRIEF

A Reply Brief was filed on January 22, 2008, in response to the Examiner's Answer mailed November 20, 2007.

Title 37, Code of Federal Regulations, §41.43 (2007) states:

(a)(1)... the primary examiner must acknowledge receipt and entry of the reply brief. In addition, the primary examiner may withdraw the final rejection and reopen prosecution or may furnish a supplemental examiner's answer responding to any new issue¹ raised in the reply brief.

The Communication mailed April 10, 2008, was an improper acknowledgment of the Reply Brief, as it constitutes a Supplemental Examiner's Answer as per MPEP§ 1208, part II. A Supplemental Examiner's Answer requires a Director or designee's approval.

CONCLUSION

Accordingly, it is ORDERED that the application is returned to the Examiner:

- 1) to vacate the Communication mailed April 10, 2008;
- 2) to generate and mail either:

¹ Any supplemental Examiner's Answer responding to a new issue raised in a reply brief must be approved by the Technology Center (TC) Director or designee. Please note that TC 1700 only allows approval by the TC Director or the Quality Assurance Specialist (QAS).

Application No. 08/855,905

a) a revised Communication properly acknowledging the Reply Brief dated January 22, 2008 in accordance with MPEP § 1208, part II.;
OR

b) issue a Supplemental Examiner's Answer with the required signature (Technology Center Director or designee), if appropriate; and
3) for such further action as may be appropriate.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

PSB

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